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August 9, 2019

**VIA ECF**

Honorable Carol B. Amon  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: ***Andrew Smalls v. P.O. Collins., et. al.,***  
**Docket No.: 14 Civ. 2326 (CBA)**

Your Honor:

I represent plaintiff Andrew Smalls in the above-referenced civil rights action brought pursuant to 42 U.S.C. §1983. I write now to inform the Court that on August 8, 2019, the Hon. John G. Koeltl specifically addressed the McDonough v. Smith, 139 S. Ct. 2149 (2019) argument raised by defendants in their post-trial motion, and held that McDonough *does not add a favorable termination element*, and a fair trial claim can even proceed “despite the existence of some conviction.” See Wellner v. City of New York, et. al., No. 16-Civ-7032 (JGK), 2019 WL 3729806, at \*6 (S.D.N.Y. Aug. 8, 2019) (“The defendants next argue that the recent Supreme Court decision McDonough v. Smith, 139 S. Ct. 2149 (2019), adds an element to a claim for the denial of the right to fair trial – namely, that the prosecution against the accused must end in the accused’s favor... McDonough, however, offered no occasion to determine whether a plaintiff could pursue a fabricated evidence claim despite the existence of some conviction. *The Supreme Court was clear on this issue.*”) (emphasis supplied). Judge Koeltl’s decision in Wellner is attached for the Court’s review.

I thank the Court for its consideration.

Respectfully Submitted,



John J. Meehan

Cc: Elissa Fudim, Esq. / Brian Francolla, Esq.  
*Counsel for defendants.*